



NEW APPLICATION



Town of S

0000092997

RECEIVED

Public Works Department

2008 DEC 29 P W 08

AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

DEC 29 2008

December 24, 2008

Arizona Corporation Commission  
Attention: Docket Control  
1200 W. Washington St.  
Phoenix, AZ. 85007

RR-03639A-08-0618

DOCKETED BY	nr
-------------	----

**RE: Proposed Modification to Union Pacific Railroad Crossing for the  
La Cañada Drive (Phase III) Roadway Widening Project (Town of Sahuarita, Arizona)  
La Cañada Drive at El Toro Road, Railroad M.P. 1005.61  
Anamax Mine Spur Subdivision, DOT Crossing No. 742-159T**

To whom it may concern:

Please accept this letter as application to upgrade an existing Union Pacific Railroad (UPRR) crossing as part of a Town of Sahuarita roadway widening project.

The specific location of the crossing is near the intersection of La Cañada Drive and El Toro Road within the Town of Sahuarita, Pima County, Arizona, and is further described by as Railroad M.P. 1005.61, Anamax Mine Spur Subdivision, DOT Crossing No. 742159T

The existing crossing will require upgrading as part of the Town's La Cañada Drive Phase III project. The existing roadway will be widened to accommodate three 12-foot lanes with six-foot paved shoulders, curb, and sidewalks. Until a turn lane is warranted, the roadway will be striped as a two-lane roadway with twelve-foot paved shoulders. Please see attached concept sketch showing the proposed layout and dimensions

Due to existing ROW constraints, adjacent land use, and proximity to the existing driveways and existing intersection of El Toro Road, a grade separated crossing has been eliminated from consideration. The required horizontal and vertical geometry required for grade separated crossing would limit existing traffic movements and access from La Cañada Drive, effect Pima County landfill operations, and potentially encroach into adjacent mining property.

The type of warning devices to be installed with the crossing upgrade includes advance warning signage/pavement markings as well as warning flashers and crossing gates to stop vehicular traffic while a train crosses La Cañada Drive.

As outlined in a Public Road At-Grade Crossing Agreement with UPRR, the Town of Sahuarita will reimburse UPRR the cost of maintenance activities associated with the crossing warning devices. In addition, the Town of Sahuarita will be funding the construction of the crossing upgrade as part of the La Cañada Phase III project.

Please provide the required Procedural Order and/or any additional information related to the hearing process. Correspondence/Information can be sent directly to:

Town of Sahuarita - Department of Public Works  
Attention: Joel Harris  
375 W. Sahuarita Center Way  
Sahuarita, Arizona 85269

If you have any questions, please call me immediately at (520) 399-3339.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Harris' with a stylized flourish at the end.

Joel T. Harris, P.E.  
Civil Engineer  
Town of Sahuarita Public Works Department

Attachment (concept sketch)

Cc: Rick Robinson, Town of Sahuarita  
Farhad Moghimi, Town of Sahuarita  
Aziz Aman, Union Pacific Railroad  
Alejandro Angel, Psomas  
File





**CONTRACT CO-08-0087**

AUDIT 249322

# PUBLIC ROAD AT-GRADE CROSSING AGREEMENT

Town of Sahuarita  
Town Clerk Department  
2008 AUG 29 PM 4: 30 AM

BETWEEN  
**UNION PACIFIC RAILROAD COMPANY**  
AND THE  
**PACIFIC**  
**TOWN OF SAHUARITA**

COVERING THE  
RECONSTRUCTION MAINTENANCE AND USE OF THE  
LACANADA DRIVE AT-GRADE PUBLIC ROAD CROSSING  
DOT NO. 742-159T

TRACK NO. 731 - OPPOSITE RAILROAD MILE POST 1005.65  
OF THE NOGALES SUBDIVISION

AT OR NEAR

SAHUARITA,  
PIMA COUNTY,  
ARIZONA

Town of Sahuarita  
Town Clerk Department  
2008 OCT 20 PM 3: 54



# CONTRACT CO-08-0087

UPRR Folder No.: 2480-17

UPRR Audit No.: 249322

## PUBLIC ROAD AT-GRADE CROSSING AGREEMENT

LaCanada Drive – DOT No.: 742-159T  
Track No. 731 – Opposite UPRR Mile Post 1005.65 – Nogales Subdivision  
Sahuarita, Pima County, Arizona

THIS AGREEMENT is made and entered into as of the 25<sup>th</sup> day of September, 2008, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 (the "Railroad") and the **TOWN OF SAHUARITA**, a municipal corporation of the State of Arizona, to be addressed at PO Box 879, Sahuarita, AZ 85629 (the "Town"),

### RECITALS:

Presently, the Town utilizes the Railroad's property for the existing LaCanada Drive at-grade public road crossing, DOT No. 742-159T, on Track No. 731, opposite Railroad Mile Post 1005.65 on it's Nogales Subdivision, in Sahuarita, Pima County, Arizona, hereinafter the "Roadway" and where the Roadway crosses the Railroad's property is the "Crossing Area."

The Town now desires to undertake as its project (the "Project") the reconstruction, maintenance and use of the existing LaCanada Drive at-grade public road crossing. The existing aforementioned roadway, as reconstructed is shown on the Railroad Location Print marked **Exhibit A** and the Detailed Print marked **Exhibit A-1**, each attached hereto and hereby made a part hereof.

The Railroad and the Town are entering into this Agreement to cover the above.

### AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

### ARTICLE 1 - LIST OF EXHIBITS

The exhibits below are attached hereto and hereby made a part hereof.

Exhibit A	Railroad Location Print
Exhibit A-1	Detailed Print
Exhibit B	Terms and Conditions
Exhibit B-1	Insurance Requirements
Exhibit C	Railroad's Track & Surface Material and Force Account Estimate
Exhibit C-1	Railroad's Signal Material and Force Account Estimate
Exhibit D	Railroad Form of Contractor's Right of Entry Agreement

**ARTICLE 2 - EXHIBITS B AND B-1.**

The general terms and conditions marked **Exhibit B**, and the Contractor's insurance requirements marked **Exhibit B-1**, are attached hereto and hereby made a part hereof.

**ARTICLE 3 - RAILROAD GRANTS RIGHT.**

For and in consideration of an administrative fee of **ONE THOUSAND DOLLARS (\$1,000.00)** to be paid by the Town to the Railroad upon the execution and delivery of this Agreement and in further consideration of the Town's agreement to perform and abide by the terms of this Agreement including all exhibits, the Railroad hereby grants to the Town the right to establish or reestablish, construct or reconstruct, maintain, repair and renew the road crossing over and across the Crossing Area.

**ARTICLE 4 - DEFINITION OF CONTRACTOR**

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the Town to perform any Project work on any portion of the Railroad's property and shall also include the contractor's subcontractors and the contractor's and subcontractor's respective employees, officers and agents.

**ARTICLE 5 - CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE**

- A. If the Town will be hiring a Contractor to perform any work involving the Project (including initial construction and any subsequent relocation or maintenance and repair work), the Town shall require the Contractor to:
- execute the Railroad's then current Contractor's Right of Entry Agreement
  - obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
  - provide such insurance policies, certificates, binders and/or endorsements to the Railroad before allowing any Contractor to commence any work in the Crossing Area or on any other Railroad property. The Railroad's current insurance requirements are described in **Exhibit B-1**, attached hereto and hereby made a part hereof.
- B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit D**, attached hereto and hereby made a part hereof. The Town confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on any Railroad property. Under no circumstances will the Contractor be allowed on the Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.
- C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

*Senior Manager - Contracts  
Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, Mail Stop 1690*



*Omaha, NE 68179-1690*  
*UPRR Folder No.: 2480-17*

- D. If the Town's own employees will be performing any of the Project work, the Town may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

#### **ARTICLE 6 - FEDERAL AID POLICY GUIDE**

- A. If the Town will be receiving any federal funding for the Project:
- the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B are incorporated into this Agreement by reference, and
  - construction work by the Town and Contractor shall be performed, and any reimbursement to the Railroad for work it performs, shall be made in accordance with the Federal Aid Policy Guide.
- B. If federal funding is involved, as provided in 23 CFR 646.210(b)(2), the Project is of no ascertainable benefit to the Railroad and the Railroad shall not be obligated to pay or contribute to any Project costs.

#### **ARTICLE 7 - WORK TO BE PERFORMED BY THE RAILROAD**

- A. The work to be performed by the Railroad, at the Town's sole cost and expense, is described in the Railroad's Material and Force Account Estimate(s):
- Track & Surface Material Estimate dated March 1, 2008, in the amount of \$175,421.00, marked **Exhibit C**,
  - Signal Material Estimate dated January 4, 2008, in the amount of \$360,468.00, marked **Exhibit C-1**,
- each attached hereto and hereby made a part hereof (collectively the "Estimate"). As set forth in the Estimate, the Railroad's combined estimated cost for the Railroad's work associated with the Project is (\$535,919.00).
- B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the Town in the event the Town does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimate.
- C. The Town acknowledges that the Estimate does not include any estimate of flagging or other protective service costs that are to be paid by the Town or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. All of such costs incurred by the Railroad are to be paid by the Town or the Contractor as determined by the Railroad and the Town. If it is determined that the Railroad will be billing the Contractor directly for such costs, the Town agrees that it will pay the Railroad for any flagging costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing.
- D. The Town agrees to reimburse the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, actual costs of preliminary engineering review, construction inspection, procurement of



materials, equipment rental, manpower and deliveries to the job site and all of the Railroad's normal and customary additives (which shall include direct and indirect overhead costs) associated therewith.

#### **ARTICLE 8 - PLANS**

- A. The Town, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications and submit such plans and specifications to the Railroad's Assistant Vice President Engineering – Design, or his authorized representative, for review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.
- B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering–Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.
- C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.
- D. Notwithstanding the Railroad's approval of the Plans, the Railroad shall not be responsible for the permitting, design, details or construction of the Roadway.

#### **ARTICLE 9 - EFFECTIVE DATE; TERM; TERMINATION.**

- A. This Agreement shall become effective as of <sup>September 8, 2008</sup> ~~September 6, 2006~~; and shall continue in full force and effect for as long as the Structure remains on the Railroad's property. *LS TM JF*
- B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to the Town in the event the Town does not commence construction on the portion of the Project located on the Railroad's property within twelve (12) months from the date of this Agreement, or from the date that the Railroad has executed this Agreement and returned it to the Town for its execution, whichever is applicable.
- C. If the Agreement is terminated as provided above, or for any other reason, the Town shall pay to the Railroad all actual costs incurred by the Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary or final Project Plans.

#### **ARTICLE 10 - CONDITIONS TO BE MET BEFORE TOWN CAN COMMENCE WORK.**

Neither the Town nor the Contractor may commence any work within the Crossing Area or on any other Railroad property until:

- The Railroad and Town have executed this Agreement.
- The Railroad has provided to the Town the Railroad's written approval of the Plans.
- Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements set forth in the Contractor's Right of Entry Agreement.





# ARTICLE 11 - SIGNAL MAINTENANCE.

The Town agrees to reimburse the Railroad the cost of future maintenance of the automatic grade-crossing protection within thirty (30) days of the Town's receipt of billing.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed in duplicate as of the date first herein written.

## UNION PACIFIC RAILROAD COMPANY

(Federal Tax ID #94-6001323)

By *Beverly L. Kubat for*  
GREGORY L. PINKER  
Director Contracts

WITNESS:

TOWN OF SAHUARITA

By *Ryan Salt*  
Title MAYOR

(Seal)

Pursuant to Resolution/Order No. 2008-083  
dated: 9-8-2008, 2008  
hereto attached.



ATTEST:

*Vicky Miel*  
VICKY MIEL, MMC, TOWN CLERK

APPROVED AS TO FORM:

*D. J. Hochuli*  
DANIEL J. HOCHULI, TOWN ATTORNEY

Town of Sahuarita  
Town Clerk Department

2008 OCT 20 PM 3:54

Town of Sahuarita  
Town Clerk Department  
2008 AUG 29 PM 4:30 AM

# EXHIBIT A

To Public Road At-Grade Crossing Agreement

Cover Sheet for the  
Railroad Location Print





# EXHIBIT A-1

To Public Road At-Grade Crossing Agreement

Cover Sheet for the  
Detailed Print





# EXHIBIT B

To Public Road At-Grade Crossing Agreement

Cover Sheet for the  
Terms and Conditions

## **EXHIBIT B**

### **TO PUBLIC ROAD AT GRADE CROSSING AGREEMENT**

#### **TERMS AND CONDITIONS**

##### **SECTION 1. CONDITIONS AND COVENANTS**

- a) The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Town shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the Town shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the Town for the purpose of conveying electric power or communications incidental to the Town's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the Town to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.
- b) The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes in such manner as not unreasonably to interfere with its use as a public highway. In the event the Railroad shall place tracks upon the Crossing Area, the Town shall, at its sole cost and expense, modify the highway to conform with the rail line.
- c) The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or not, and also to any renewals thereof. The Town shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the railroad property, unless the Town at its own expense settles with and obtains releases from such nonparties.
- d) The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; also the right to cross the Crossing Area with all kinds of equipment. The Railroad further reserves the right to attach signal, communication or power lines to any highway facilities located upon the property, provided that such attachments shall comply with Town's specifications and will not interfere with the use of the Crossing Area.
- e) So far as it lawfully may do so, the Town will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.
- f) If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Roadway and its appurtenances, or for the performance of any work in connection with the Project, the Town will acquire all such other property and rights at its own expense and without expense to the Railroad.

##### **SECTION 2. CONSTRUCTION OF ROADWAY**

- a) The Town, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.
- b) Except as may be otherwise specifically provided herein, the Town, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Roadway and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Railroad within its right of way) and all necessary drainage facilities, guard rails or barriers, and right of way fences between the Roadway and the railroad tracks. Upon completion of the Project, the Town shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.
- c) All construction work of the Town upon the Railroad's property (including, but not limited to, construction of the Roadway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering - Design of the Railroad or his authorized representative and in accordance with the Plans, and other guidelines furnished by the Railroad.
- d) All construction work of the Town shall be performed diligently and completed within a reasonable time, and in any event within three (3) years from the effective date of this Agreement, or within such further period of time as may be specified in writing by the Railroad's Assistant Vice President Engineering - Design. No part of the Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the Town. The Town hereby assumes the risk of any such delays and agrees that no claims for damage on account of any delay shall be made against the Railroad.



### **SECTION 3. INJURY AND DAMAGE TO PROPERTY**

If the Town, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Town is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the Town at the Town's own expense, or by the Railroad at the expense of the Town, and to the satisfaction of the Railroad's Assistant Vice President Engineering - Design.

### **SECTION 4. PAYMENT FOR WORK BY THE RAILROAD**

- a) Bills for work and materials shall be paid by the Town within thirty (30) days of its receipt thereof. The Railroad will submit to the Town current bills for all work performed by the Railroad and all flagging and other protective services and devices during progress of the Project (unless flagging is to be billed directly to the Contractor). The Railroad will submit final billing within one hundred and twenty (120) days after completion of the Project, provided the Town advises the Railroad of the commencement of the 120-day period by giving the Railroad written notification of completion of the Project.
- b) The Railroad may contract for the performance of any of its work by other than railroad forces. The Railroad shall notify the Town of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the Town shall reimburse the Railroad for the amount of the contract.

### **SECTION 5. MAINTENANCE AND REPAIRS**

- a) The Town shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends, which shall be maintained by and at the expense of the Railroad.
- b) If, in the future, the Town elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, replaced with paving or some surfacing material other than timber planking, the Railroad, at the Town's expense, shall install such replacement surfacing, and in the future, to the extent repair or replacement of the surfacing is necessitated by repair or rehabilitation of the Railroad's tracks through the Crossing Area, the Town shall bear the expense of such repairs or replacement.

### **SECTION 6. CHANGES IN GRADE**

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the tracks located on the crossing Area, the Town shall, at its own expense, conform the public highway in the Crossing Area to conform with the change of grade of the trackage.

### **SECTION 7. REARRANGEMENT OF WARNING DEVICES**

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either railroad, highway or both, the parties will apportion the expense incidental thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.

### **SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS**

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the Town that the work will be performed in a safe manner and in conformity with the following standards:

- a) **Definitions.** All references in this Agreement to the Town shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the Town shall include work both within and outside of the Railroad's property.
- b) **Compliance With Laws.** The Town shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Town shall use only such methods as are consistent with safety, both as concerns the Town, the Town's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Town (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the Town to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Town shall reimburse and indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Town further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.
- c) **No Interference or Delays.** The Town shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations

or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

- d) **Supervision**. The Town, at its own expense, shall adequately police and supervise all work to be performed by the Town, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the Town for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the Town with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the Town will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.
- e) **Suspension of Work**. If at any time the Town's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the Town is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Town shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.
- f) **Removal of Debris**. The Town shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the Town at the Town's own expense or by the Railroad at the expense of the Town. The Town shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.
- g) **Explosives**. The Town shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.
- h) **Excavation**. The Town shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The Town shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The Town, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Town in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.
- i) **Drainage**. The Town, at the Town's own expense, shall provide and maintain suitable facilities for draining the Structure and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The Town, at the Town's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the Town, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The Town shall not obstruct or interfere with existing ditches or drainage facilities.
- j) **Notice**. Before commencing any work, the Town shall provide at least ten (10) days prior notice (excluding weekends and holidays) to the Railroad's Manager-Track Maintenance.
- k) **Fiber Optic Cables**. Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Town shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the Town. If it is, Town will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

#### **SECTION 9. INTERIM WARNING DEVICES**

If at anytime it is determined by a competent authority, by the Town, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the Town shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed.

#### **SECTION 10. OTHER RAILROADS**

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

**SECTION 11. REMEDIES FOR BREACH OR NONUSE**

- .) If the Town shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the highway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the Town will reimburse the Railroad for the expenses thereof.
- b) Nonuse by the Town of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the Town hereunder.
- c) The Town will surrender peaceable possession of the Crossing Area and Roadway upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

**SECTION 12. MODIFICATION - ENTIRE AGREEMENT**

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the Town and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the Town shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the Town and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

**SECTION 13. ASSIGNMENT; SUCCESSORS AND ASSIGNS**

This Agreement shall not be assigned without the written consent of the Railroad. Subject hereto, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.



# EXHIBIT B-1

To Public Road At-Grade Crossing Agreement

Cover Sheet for the  
Insurance Requirements



## EXHIBIT B-1

### TO PUBLIC ROAD AT-GRADE CROSSING AGREEMENT

#### CONTRACT INSURANCE REQUIREMENTS

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

- A. Commercial General Liability Insurance.** Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

- B. Business Automobile Coverage Insurance.** Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident.

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. Workers Compensation And Employers Liability Insurance.** Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

- D. Railroad Protective Liability Insurance.** Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

- E. Umbrella Or Excess Insurance.** If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

#### **Other Requirements**

- F.** All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- G.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless:
- insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or
  - all punitive damages are prohibited by all states in which this agreement will be performed.
- H.** Contractor waives all rights against Railroad and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers liability or commercial umbrella or excess liability insurance obtained by Contractor required by this agreement.
- I.** Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

- J. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.
- K. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

# EXHIBIT C

To Public Road At-Grade Crossing Agreement

Cover Sheet for the  
Track & Surface Estimate of Material and Force  
Account Work

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK  
BY THE  
UNION PACIFIC RAILROAD

DATE: 2008-03-01

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2008-08-30

DESCRIPTION OF WORK:

2008 RECOLLECT ROAD CROSSING - ANAMAX MINE SPUR - MP 1,005.65  
LA CANADA DR. - 100% RECOLLECT FROM TOWN OF SAHUARITA.  
1 XING LOCATION = 88 TF OF CONCRETE XING  
2 CARS OF BALLAST  
MISC SIGNAL WORK.

PID: 58654 AWO: 83544 MP, SUBDIV: 1005.65, ANAMAX  
SERVICE UNIT: 16 CITY: SAHUARITA STATE: AZ

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
-----							
ENGINEERING WORK							
ENGINEERING			10000		10000		10000
LABOR ADDITIVE 236%			23600		23600		23600
-----							
TOTAL ENGINEERING			33600		33600		33600
SIGNAL WORK							
LABOR ADDITIVE 236%			1155		1155		1155
SALES TAX				2	2		2
SIGNAL			489	68	557		557
-----							
TOTAL SIGNAL			1644	70	1714		1714
TRACK & SURFACE WORK							
BALAST	2.00	CL	1119	1504	2623		2623
BILL PREP				900	900		900
FIELD WELD			170		170		170
HOMELINE FREIGHT				900	900		900
LABOR ADDITIVE 236%			49283		49283		49283
MATL STORE EXPENSE				713	713		713
OTM			1331	4414	5745		5745
PERMITTING				100	100		100
RAIL	320.00	LF	1799	5862	7661		7661
RDYING	88.00	TF	8408	17679	26087		26087
SALES TAX				1328	1328		1328
SAW CUT STREET APPROACH				3000	3000		3000
TRAFFIC CONTROL				16000	16000		16000
TRK-SURF, LIN			5010		5010		5010
WELD			5528	254	5782		5782
XTIE	65.00	EA	11281	3524	14805		14805
-----							
TOTAL TRACK & SURFACE			83929	56178	140107		140107
LABOR/MATERIAL EXPENSE			119173	56248			
RECOLLECTIBLE/UPRR EXPENSE					175421	0	
ESTIMATED PROJECT COST							175421
EXISTING REUSEABLE MATERIAL CREDIT					0		
SALVAGE NONUSEABLE MATERIAL CREDIT					0		
-----							
RECOLLECTIBLE LESS CREDITS							

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.



# EXHIBIT C-1

To Public Road At-Grade Crossing Agreement

Cover Sheet for the  
Signal Estimate of Material and Force Account  
Work

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK  
BY THE  
UNION PACIFIC RAILROAD

DATE: 2008-01-04

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2008-07-04

DESCRIPTION OF WORK:

INSTALL NEW CANTS. AND LED FL SIGNALS W/GATES & CWT IN NEW CABIN AT  
LA CANADA DRIVE IN SANUARITA, AZ, M.P. 1005.65

SIGNAL PROJECT MANAGER: RODY BURDEN 935-7680

RAILROAD TO PERFORM ALL WORK / COST DISTRIBUTED AS FOLLOWS:

SIGNAL - TOWN OF SANUARITA 100%

PID: 58653 AMO: 83543 MP, SUBDIV: 1005.65, ANHMAX  
SERVICE UNIT: 16 CITY: SANUARITA STATE: AZ

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
<b>ENGINEERING WORK</b>							
ENGINEERING			4247		4247		4247
LABOR ADDITIVE 100%			16942		16942		16942
SIG-HWY XNG			4765		4765		4765
<b>TOTAL ENGINEERING</b>			<b>25954</b>		<b>25954</b>		<b>25954</b>
<b>SIGNAL WORK</b>							
BILL PREP		900			900		900
CONTRACT				7839	7839		7839
EARTH FILL/ROCK				450	450		450
CANG MOBIL.				3000	3000		3000
LABOR ADDITIVE 100%		101238			101238		101238
METER SERVICE			12000		12000		12000
PERSONAL EXPENSES			41250		41250		41250
PRE. DESIGN			20000		20000		20000
SALES TAX			2977		2977		2977
SIGNAL		53850	74447		128297		128297
TRANSPORTATION CHARGES			4765		4765		4765
WZ TRAFFIC CONTROL			11798		11798		11798
<b>TOTAL SIGNAL</b>			<b>155988</b>	<b>178526</b>	<b>334514</b>		<b>334514</b>
<b>LABOR/MATERIAL EXPENSE</b>			<b>181942</b>	<b>178526</b>			
RECOLLECTIBLE/UPRR EXPENSE					360468	0	
ESTIMATED PROJECT COST							360468
EXISTING REUSEABLE MATERIAL CREDIT					0		
SALVAGE NONUSEABLE MATERIAL CREDIT					0		

RECOLLECTIBLE LESS CREDITS

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

# EXHIBIT D

To Public Road At-Grade Crossing Agreement

Cover Sheet for the  
Contractor's Right of Entry Agreement



May 21, 2008

UPRR Folder No.: 2480-17

**To the Contractor:**

Before Union Pacific Railroad Company can permit you to perform work on its property for the reconstruction, maintenance and use of the existing LaCanada Drive at-grade public road crossing, it will be necessary for you to complete and execute two originals of the enclosed Contractor's Right of Entry Agreement. Please:

1. Fill in the complete legal name of the contractor in the space provided on Page 1 of the Contractor's Right of Entry Agreement. If a corporation, give the state of incorporation. If a partnership, give the names of all partners.
2. Fill in the date construction will begin and be completed in Article 5, Paragraph A.
3. Fill in the name of the contractor in the space provided in the signature block at the end of the Contractor's Right of Entry Agreement. If the contractor is a corporation, the person signing on its behalf must be an elected corporate officer.
4. Execute and return all copies of the Contractor's Right of Entry Agreement together with your Certificate of Insurance as required in Exhibit B, in the attached, self-addressed envelope.
5. Include a check made payable to the Union Pacific Railroad Company in the amount of **\$500.00**. If you require formal billing, you may consider this letter as a formal bill. In compliance with the Internal Revenue Services' new policy regarding their Form 1099, I certify that 94-6001323 is the Railroad Company's correct Federal Taxpayer Identification Number and that Union Pacific Railroad Company is doing business as a corporation.

Under Exhibit B of the enclosed Contractor's Right of Entry Agreement, you are required to procure Railroad Protective Liability Insurance (RPLI) for the duration of this project. As a service to you, Union Pacific is making this coverage available to you. If you decide that acquiring this coverage from the Railroad is of benefit to you, please contact Mr. Mike McGrade of Marsh USA @ 800-729-7001, e-mail: [william.j.smith@marsh.com](mailto:william.j.smith@marsh.com).

This agreement will not be accepted by the Railroad Company until you have returned all of the following to the undersigned at Union Pacific Railroad Company:

1. Executed, unaltered duplicate original counterparts of the Contractor's Right of Entry Agreement;
2. Your check in the amount of \$500.00 to pay the required balance due of the required Contractor's Right of Entry fee. (The Folder Number and the name "Paul G. Farrell" should be written on the check to insure proper credit). If you require formal billing, you may consider this letter as a formal bill;
3. Copies of all of your up-to-date General Liability, Auto Liability & Workman's Compensation Insurance Certificates (*yours and all contractors*), naming Union Pacific Railroad Company as additional insured;



Real Estate Department  
UNION PACIFIC RAILROAD COMPANY  
1400 Douglas Street, MS 1690  
Omaha, Nebraska 68179-1690  
fax: 402.501.0340



4. Copy of your up-to-date Railroad Protective Liability Insurance Certificate (*yours and all contractors*'), naming Union Pacific Railroad Company as additional insured.

**RETURN ALL OF THESE REQUIRED ITEMS TOGETHER IN ONE ENVELOPE.  
DO NOT MAIL ANY ITEM SEPARATELY.**

If you have any questions concerning this agreement, please contact me as noted below. Have a safe day!

*Paul G. Farrell*

Senior Manager Contracts

Phone: (402) 544-8620

e-mail: [pgfarrell@up.com](mailto:pgfarrell@up.com)



Real Estate Department  
UNION PACIFIC RAILROAD COMPANY  
1400 Douglas Street, MS 1690  
Omaha, Nebraska 68179-1690  
fax: 402.501.0340



UPRR Folder No.: 2480-17

UPRR Audit No.: \_\_\_\_\_

## CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

**THIS AGREEMENT** is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and

\_\_\_\_\_,  
(NAME OF CONTRACTOR)  
a \_\_\_\_\_ corporation ("Contractor").  
(State of Corporation)

### RECITALS:

Contractor has been hired by the *Town of Sahuarita* to perform work relating to the reconstruction, maintenance and use of the existing LaCanada Drive at-grade public road crossing (the "work"), with all or a portion of such work to be performed on property of Railroad on Track #731 opposite Railroad Mile Post 1005.61 of the Railroad's Nogales Subdivision in Sahuarita, Pima County, Arizona, as such location is in the general location shown on the Railroad Location Print marked **Exhibit A** and the Detailed Print marked **Exhibit A-1**, each attached hereto and hereby made

a part hereof, which work is the subject of a contract dated \_\_\_\_\_ between Railroad and the Town of Sahuarita. (Date of C&M Agreement)

The Railroad is willing to permit the Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

### AGREEMENT:

**NOW, THEREFORE**, it is mutually agreed by and between Railroad and Contractor, as follows:

#### **ARTICLE 1 - DEFINITION OF CONTRACTOR.**

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

#### **ARTICLE 2 - RIGHT GRANTED; PURPOSE.**

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is limited to those

portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

**ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C & D.**

The terms and conditions contained in **Exhibit B**, **Exhibit C** and **Exhibit D**, attached hereto, are hereby made a part of this Agreement.

**ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.**

- A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.
- B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

*Larry Collins*  
*Manager Track Maintenance*  
*Union Pacific Railroad Company*  
*1255 South Campbell Avenue*  
*Tucson, AZ 85713*  
*Phone: 520-629-2230*  
*Fax: 520-629-2231*

*Nels Johnson*  
*Manager Signal Maintenance*  
*Union Pacific Railroad Company*  
*1255 South Campbell Avenue*  
*Tucson, AZ 85713*  
*Phone: 520-629-2234*  
*Fax: 520-629-2368*

- C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

**ARTICLE 5 - TERM; TERMINATION.**

- A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until \_\_\_\_\_, unless sooner terminated as herein provided, or  
*(Expiration Date)*  
at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.
- B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

**ARTICLE 6 - CERTIFICATE OF INSURANCE.**

- A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the



insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.

B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

*Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, MS 1690  
Omaha, NE 68179-1690  
UPRR Folder No.: 2480-17*

**ARTICLE 7 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.**

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

**ARTICLE 8 - ADMINISTRATIVE FEE.**

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad **FIVE HUNDRED DOLLARS (\$500.00)** as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

**ARTICLE 9 - CROSSINGS.**

No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

**ARTICLE 10 - EXPLOSIVES.**

Explosives or other highly flammable substances shall not be stored on Railroad's property without the prior written approval of Railroad.



**IN WITNESS WHEREOF**, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

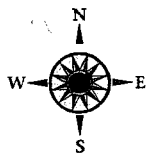
**UNION PACIFIC RAILROAD COMPANY**  
*(Federal Tax ID #94-6001323)*

By: \_\_\_\_\_  
PAUL G. FARRELL  
Senior Manager Contracts

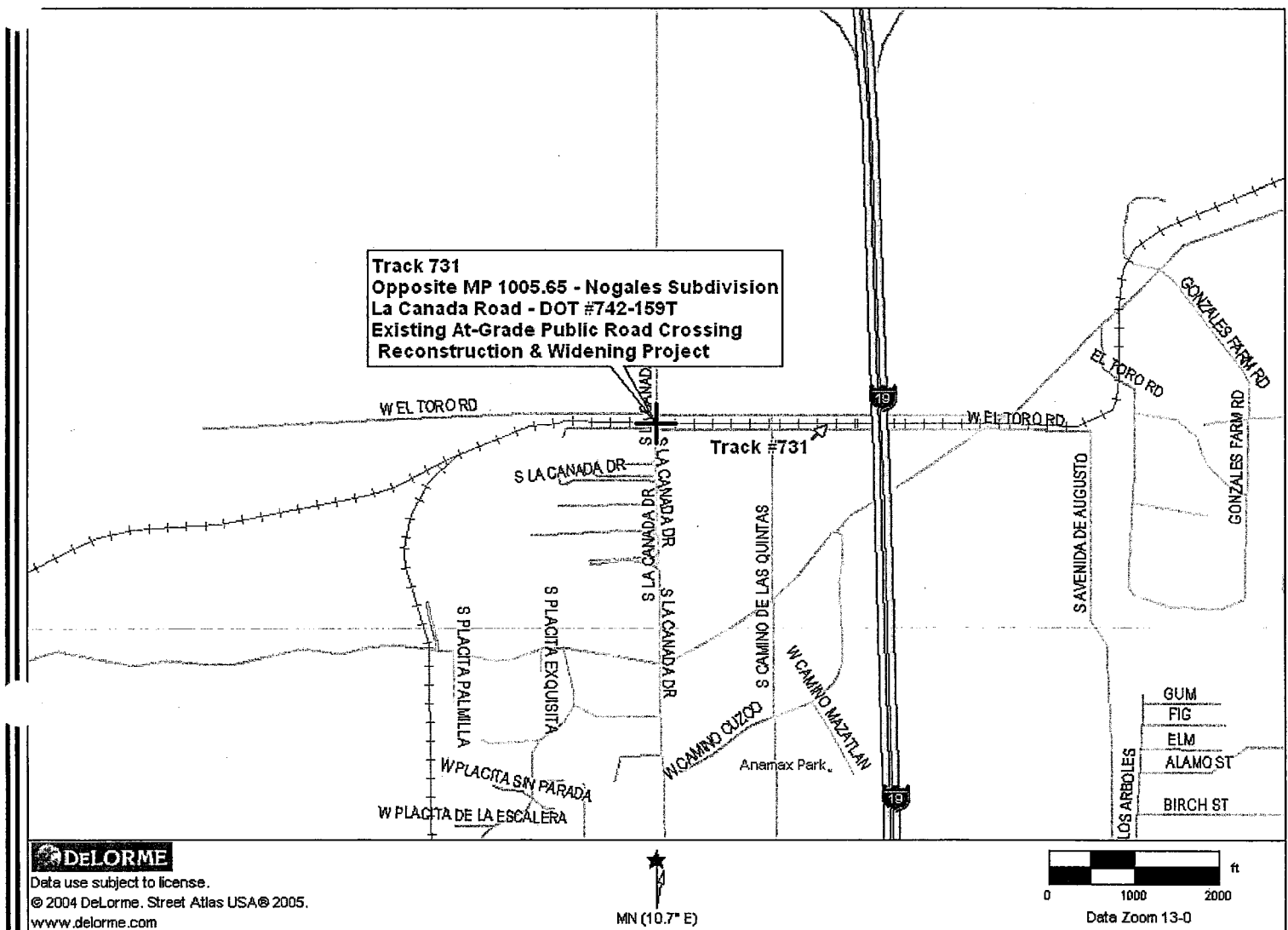
\_\_\_\_\_  
*(Name of Contractor)*

By \_\_\_\_\_

Title: \_\_\_\_\_



# RAILROAD LOCATION PRINT ACCOMPANYING A CONTRACTOR'S RIGHT OF ENTRY AGREEMENT



## RAILROAD WORK TO BE PERFORMED:

1. Re-lay 320-feet of track; Install 88-feet of concrete road crossing panels; Install 65 cross ties; install 2 carloads of ballast; and other track and surface materials.
2. Install new cantilevers and LED flashing signals with gates; Install CWT in a new cabin; and other signal materials.
3. Engineering Review and Flagging.

## EXHIBIT "A"

### UNION PACIFIC RAILROAD COMPANY

NOGALES SUBDIVISION

MILE POST 1005.65

GPS: N 31° 56.5907', W 110° 59.7157'

SAHUARITA, PIMA CO., AZ.

To accompany Contractor's Right of Entry Agreement with

(Name of Contractor)

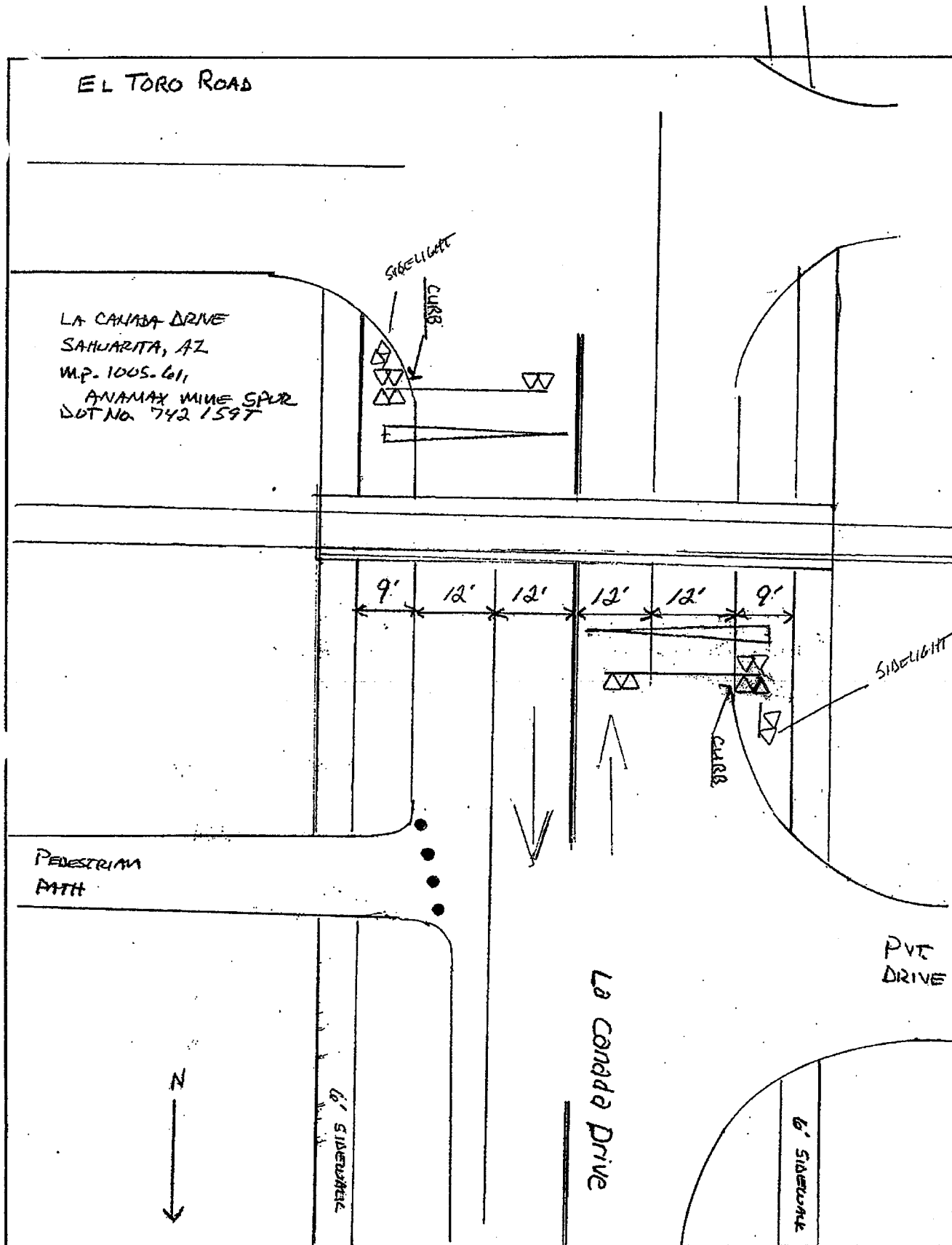
for an existing at-grade public road crossing  
reconstruction, maintenance and use project.

Folder No. 2480-17

Date: May 21, 2008

### WARNING

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE  
OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.  
PHONE: 1-(800) 336-9193



## **EXHIBIT B**

### **TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

#### **TERMS AND CONDITIONS**

##### **Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.**

- A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
- B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

##### **Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED**

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.
- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

##### **Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.**

- A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery

and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroad's tracks except at existing open public crossings.

- B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

#### **Section 4. LIENS.**

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

#### **Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

- A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.
- B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

#### **Section 6. PERMITS - COMPLIANCE WITH LAWS.**

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

#### **Section 7. SAFETY.**

- A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in **Exhibit C**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit C** to each of its employees before they enter the job site.
- B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.
- C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.



**Section 8. INDEMNITY.**

- A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "loss") incurred by any person (including, without limitation, any indemnified party, contractor, or any employee of contractor or of any indemnified party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.
- B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the loss, and shall apply regardless of any negligence or strict liability of any indemnified party, except where the loss is caused by the sole active negligence of an indemnified party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any indemnified party shall not bar the recovery of any other indemnified party.
- C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify Railroad under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.
- D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the federal employers' liability act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against Railroad.
- E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any indemnified party by statute or under common law.

**Section 9. RESTORATION OF PROPERTY.**

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

**Section 10. WAIVER OF DEFAULT.**

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

**Section 11. MODIFICATION - ENTIRE AGREEMENT.**

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

**Section 12. ASSIGNMENT - SUBCONTRACTING.**

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

## EXHIBIT C

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### INSURANCE PROVISIONS

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

- A. Commercial General Liability Insurance.** Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site, and
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

- B. Business Automobile Coverage Insurance.** Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. Workers' Compensation and Employers' Liability Insurance.** Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

- D. Railroad Protective Liability Insurance.** Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

- E. Umbrella or Excess Insurance.** If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

- F. Pollution Liability Insurance.** Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

#### Other Requirements

- G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

## **EXHIBIT D**

### **TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

#### **MINIMUM SAFETY REQUIREMENTS**

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

#### **I. Clothing**

- A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- (i) Waist-length shirts with sleeves.
  - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
  - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

#### **II. Personal Protective Equipment**

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
  - 100 feet of a locomotive or roadway/work equipment
  - 15 feet of power operated tools
  - 150 feet of jet blowers or pile drivers
  - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

#### **III. On Track Safety**

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized workwear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

#### **IV. Equipment**

It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's



property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:

- Familiar and comply with Railroad's rules on lockout/tagout of equipment.
  - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
    - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

**V. General Safety Requirements**

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
- (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
  - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
  - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
  - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
  - (v) Before stepping over or crossing tracks, look in both directions first.
  - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.